

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: **Legal Methods**
Semester- I (Batch: 2020-25)

End Semester Online Examination: February 2021

Date: 03rd February, 2021

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- The prescribed word limit is 300 words for a question of 05 marks.
- Do not exceed the prescribed word limit.

- | | | Marks |
|-----|---|--------------|
| Q.1 | <p>No customs or usages can claim supremacy over the Constitution and its vision of ensuring the sanctity of dignity, liberty, and equality. Customs and personal law have a significant impact on the civil status of individuals. Our conversations with the Constitution must be restructured to evolve both with the broadening of the content of liberty and dignity and the role of the Court as an enforcer of constitutional doctrine. The basic principle which must guide any analysis in this area is the dominance of the values of liberty, equality and fraternity as instruments in achieving individual dignity. Once individual dignity assumes the character of a shining star in the constellation of fundamental rights, the place of religion in public places must be conditioned by India's unwavering commitment to a constitutional order based on human dignity. Practices which are destructive of liberty and those which make some citizens less equal than others can simply not be countenanced. To treat women as children of a lesser god is to blink at the Constitution itself. Among the fundamental duties of every citizen recognized by the Constitution is "to renounce practices derogatory to the dignity of women. In speaking to the equality between individuals in matters of livelihood, health and remuneration for work, the Directive Principles speak to the conscience of the Constitution. To allow practices derogatory to the dignity of a woman in matters of faith and worship would permit a conscious breach of the fundamental duties of every citizen. We cannot adopt an interpretation of the Constitution which has such an effect. Our inability to state this as a matter of constitutional doctrine is liable to lead us to positions of pretence or, worse still, hypocrisy. Both are willing allies to push critical issues under the carpet. If we are truly to emerge out of the grim shadows of a society which has subjugated groups of our citizens under the weight of discrimination for centuries, it is time that the Constitution is allowed to speak as it can only do: in a forthright manner as a compact of governance, for today and the future. The constitutional morality has to be held supreme at any cost. In light of this, ban on entry of women, not only corrodes the foundational principles of the constitution, but also act as a barrier to the gradual liberation of women.'</p> <p><i>(Excerpts from Young Lawyers Association and Others v. State of Kerala)</i></p> | (5x2=
10) |

In light of the above answer the following questions:

- a) Analyze this view of the Apex Court on giving legal force to Custom by referring to the relevant other judgments.
- b) Critically analyze the dissenting opinion in *Young Lawyers Association and Others v. State of Kerala*.

Q.2 'In *Shankar Kisanrao Khade v. State of Maharashtra* ('Khade'), the Supreme Court of India, while dealing with an appeal on the issue of death sentence, expressed its concern with the lack of a coherent and consistent purpose and basis for awarding death and granting clemency. The Court specifically called for the intervention of the Law Commission of India ('the Commission') on these two issues, noting that: It seems to me that though the courts have been applying the rarest of rare principle, the executive has taken into consideration some factors not known to the courts for converting a death sentence to imprisonment for life. It is imperative, in this regard, since we are dealing with the lives of people (both the accused and the rape-murder victim) that the courts lay down a jurisprudential basis for awarding the death penalty and when the alternative is unquestionably foreclosed so that the prevailing uncertainty is avoided. Death penalty and its execution should not become a matter of uncertainty nor should converting a death sentence into imprisonment for life become a matter of chance. Perhaps the Law Commission of India can resolve the issue by examining whether death penalty is a deterrent punishment or is retributive justice or serves an incapacitative goal. It does prima facie appear that two important organs of the State, that is, the judiciary and the executive are treating the life of convicts convicted of an offence punishable with death with different standards. While the standard applied by the judiciary is that of the rarest of rare principle (however subjective or Judge-centric it may be in its application), the standard applied by the executive in granting commutation is not known. Therefore, it could happen (and might well have happened) that in a given case the Sessions Judge, the High Court and the Supreme Court are unanimous in their view in awarding the death penalty to a convict, any other option being unquestionably foreclosed, but the executive has taken a diametrically opposite opinion and has commuted the death penalty. This may also need to be considered by the Law Commission of India. Khade was not the first recent instance of the Supreme Court referring a question concerning the death penalty to the Commission. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* ('Bariyar'), lamenting the lack of empirical research on this issue, the Court observed: We are also aware that on 18-12-2007, the United Nations General Assembly adopted Resolution 62/149 calling upon countries that retain the death penalty to establish a worldwide moratorium on executions with a view to abolishing the death penalty. India is, however, one of the 59 nations that retain the death penalty. Credible research, perhaps by the Law Commission of India or the National Human Rights Commission may allow for an up-to-date and informed discussion and debate on the subject.'

(5x2=
10)

(Excerpts from the Law Commission Report no.262)

In light of the above answer the following questions:

- a) Elucidate the history of death penalty in India.
- b) Critically analyze the recommendations made by the Law Commission in this regard.

Q.3 'When we talk about the "interrelationship" between two legal systems, it is not the similarities or differences in the substantive law that really count, but mostly the different types of encounters and exchanges between the legal systems that are created in each legal culture. A legal culture is a spirit, a mentality, a set of reflexes of the legal professionals facing a practical problem. The two great legal cultures of the world, the common law culture and the civil law culture, refer to two deep conceptions of justice-the manner of reaching a just decision. These conceptions can properly be called "deep" because they are linked to a history, representations, legal traditions, political philosophy, and a sociology of legal professions. All these elements form an environment inhabited by narratives, symbols, and meanings implicitly shared by a community, a milieu that, even though it is omnipresent in legal practices, is never expressed as such. Each legal culture is, thus, like an original fold which is the matrix of the mentalities and professional reflexes of a country's lawyers.'

[Excerpts from Guy Canivet, The Interrelationship Between Common Law and Civil Law, 63 La. L. Rev. (2003)]

In light of the above, answer the following questions:

- a) Discuss the strengths and weaknesses of Common law and Civil Law system.
- b) 'Under the contemporary pressure of globalization, modern civil law and common law systems show several signs of convergence' Do you agree? Answer by referring to the Indian Legal System.
- c) Which is the most important element of Indian legal system? Justify your answer with objective analysis of various elements of our legal system.

Q.4 Laws pertaining to homosexuality, suicide, abortion serves to revive the moral conscience of the people and also aptly illustrate that law and morals act and react upon and mold each other. Do you agree? Answer by referring to the recent judicial trends in India. (5)

Q.5 Answer the following: (5x2= 10)

- a) Identify the type of legislation as a source of law and discuss the same in brief.
 - (i) GNLU Examination Rule, 2015
 - (ii) Gujarat High Court Rules, 1993

- b) We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of

conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.’

This *Excerpt* is from a landmark decision of the Supreme Court of India. It refers to rule of precedent and its significance in Indian judicial system. It also refers to a situation that weakens the binding force of a precedent. Explain the same in detail.
